PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4257

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EARL LEROY GRIFFIN, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. George Jarrod Hazel, District Judge. (8:19-cr-00464-GJH-1)

Argued: January 29, 2026 Decided: August 14, 2026

Before GREGORY, HEYTENS, and BENJAMIN, Circuit Judges.

Reversed, vacated, and remanded by published opinion. Judge Benjamin wrote the opinion, in which Judge Gregory joined. Judge Heytens wrote a dissenting opinion.

ARGUED: Stuart A. Berman, LERCH, EARLY & BREWER, CHTD., Bethesda, Maryland, for Appellant. Timothy Francis Hagan, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee. **ON BRIEF:** Erek L. Barron, United States Attorney, Kelly O. Hayes, United States Attorney, David C. Bornstein, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

DEANDREA GIST BENJAMIN, Circuit Judge:

This case turns on two basic requirements for residential search warrants: timing and nexus. A warrant affidavit must connect the evidence sought to the place to be searched and show that the evidence is likely to be there when the search occurs. The affidavit here failed because the facts alleged were either not connected with the place to be searched, too old, or both.

I. Background

A. Warrant and Affidavit

On August 30, 2019, the Calvert County Sheriff's Office Drug Enforcement Unit ("DEU") applied for a no-knock search and seizure warrant for 6740 N. Solomons Island Road. J.A. 34.[1] The warrant application was supported by a 21-page affidavit. J.A. 34–55.

The affidavit described 6740 N. Solomons Island Road as a residence in an area known as "Kent Bottom." J.A. 36. Kent Bottom is accessible by a small dirt road off of a Maryland state highway, just south of an intersection including Kent Road. J.A 36. The dirt road leads through a tree line and into an open area at the bottom of a small hill. J.A. 36. Several residences are located along or near that dirt road, including 6738, 6740, 6750, and 6754 N. Solomons Island Road. J.A. 36. The road also crosses or abuts portions of

[1] Citations to "J.A." refer to the joint appendix filed by the parties. The J.A. contains the record on appeal from the district court. Page numbers for citations to the J.A. utilize the "[J.A. or JA] #" numbering at the bottom of the page on each document.

nearby properties, including 6790 Kent Road. J.A. 36. Indeed, the affidavit described the open area at the end of the dirt road as connected to multiple properties, including 6790 Kent Road, 6738 N. Solomons Island Road, and 6740 N. Solomons Island Road. J.A. 37. It stated that DEU had observed people congregating and distributing controlled dangerous substances ("CDS") "in this area." J.A. 37.

The affidavit began with general background about Kent Bottom, stating that "[f]or decades" DEU had known that controlled substances were sold there. J.A. 36. The affiant described Kent Bottom as "an open-air drug market where multiple street and mid-level dealers conduct CDS transactions." J.A. 36. The affidavit stated that DEU's familiarity with Kent Bottom came from calls of service, citizen reports, confidential informants, confidential sources, prior DEU investigations, and surveillance. J.A. 36. Based on that history, DEU personnel claimed familiarity with the "area, the subjects who reside in or frequent the area, and the manner in which these subjects conduct CDS transactions." J.A. 36.

The affidavit then identified people whom DEU associated with Kent Bottom and the nearby residences. J.A. 37–40. It identified Earl Griffin, Sr. and Yvette Griffin as the listed owners of 6740 N. Solomons Island Road and stated that they were the defendant Earl Griffin, Jr.'s parents, defendant's brother Desmond Griffin's parents, and defendant's son Ty'Lik Griffin's grandparents. J.A. 37. It also stated that DEU had observed individuals believed to be Ty'Lik and Desmond enter and exit the 6740 residence and that Desmond had previously claimed the 6740 residence as his address. J.A. 38. The affidavit separately associated other known distributors, Thomas Brown and Tony Brown, with the nearby 6750 N. Solomons Island Road property and Joseph Brown with the nearby 6754 N. Solomons Island Road property. J.A 38.

Much of the affidavit's general background came from old criminal histories and earlier investigations in the area. J.A. 38–41. The affidavit identified several people as "street to mid-level distributors operating in Kent Bottom," including the defendant, a man named Bobby King, Thomas Brown, Tony Brown, and Desmond Griffin. J.A. 38. It also stated the defendant's prior criminal history, including CDS convictions from 2006, 2014, and 2015. J.A. 39. It listed Desmond Griffin's 2006 CDS charges, which did not result in a conviction. J.A. 39. It identified Ty'Lik Griffin as one of several people frequently observed in Kent Bottom but stated that it was "unknown if they are directly involved in CDS distribution." J.A. 40.

The affidavit then recounted incidents from 2006, 2016, 2017, and 2018. J.A. 40–41. Only the 2006 incidents directly involved the 6740 residence. J.A. 40–41. During that 2006 search, officers found the defendant inside the 6740 residence "attempting to flush a plastic bag of Marijuana down the toilet." J.A. 41. Officers also recovered money, marijuana, and paraphernalia described as "indicative of distribution." J.A. 41. The affidavit next described later incidents from 2016 to 2018, but those incidents concerned Kent Bottom or the Kent Road area generally. J.A. 41. And only one of those later incidents mentioned the defendant personally: it described a 2017 traffic stop in which officers recovered cocaine after a vehicle entered and left Kent Bottom and during which an occupant of the vehicle identified the defendant and Bobby King as individuals who had "possibly distributed" the cocaine. J.A. 41.

The affidavit's more recent allegations began with surveillance from April 24, 2019, about four months before the warrant issued. J.A. 43. That day, officers saw a white Chevrolet Colorado arrive in Kent Bottom and park near the 6740 residence. J.A. 43. A passenger later identified as Norman Terry briefly met with a man believed to be Thomas Brown, whom the affidavit had associated with the 6750 property. J.A. 43. After the truck left Kent Bottom, officers stopped it and found copper steel wool and a glass pipe used for smoking crack cocaine. J.A. 43. Terry told a detective that he had gone to Kent Bottom to buy crack cocaine and that Thomas Brown told him to return in about an hour. J.A. 43.

Later on April 24, officers saw an unknown man near a van at the 6750 residence, the property associated with Thomas and Tony Brown, handling what appeared to be bags containing a white substance. J.A. 43–44. The unknown man and Thomas Brown then walked toward the 6740 residence. J.A. 44. The unknown man met with Ty'Lik Griffin "in the side yard of 6740 N. Solomons Island Road." J.A. 44.

A short time later, Ty'Lik allegedly conducted a hand-to-hand drug transaction with Richard Berry "in front of 6740 N. Solomons Island Road." J.A. 44. Officers later stopped Berry's vehicle and recovered approximately 0.5 grams of crack cocaine. J.A. 44. Berry said he bought the crack cocaine from "lil smoke," which DEU personnel knew as Ty'Lik's street name. J.A. 44.

The affidavit next described surveillance from August 9, 2019, about three weeks before the warrant issued. J.A. 46–48. It described a suspected hand-to-hand transaction involving a man believed to be Joseph Brown, whom the affidavit had associated with the 6754 property, and a silver car that had stopped near 6750. J.A. 46. It also described a dark vehicle parked under trees near the top of the gravel driveway in front of the 6740 residence and positioned out of view from the state highway. J.A. 46–47. Later that evening, officers saw a silver car parked along the tree line in front of the 6740 residence while multiple people walked up to it. J.A. 47.

The August 9 surveillance also included Desmond Griffin. J.A. 48. The affidavit stated that Desmond was seen frequently in Kent Bottom that day. J.A. 48. It stated that Desmond "was present at Kent Bottom during several suspected CDS transactions." J.A. 48. It further stated that Desmond "was seen walking in and out of the residence at 6740 N. Solomons Island Rd before and/or after the transactions." J.A. 48.

The affidavit also described surveillance from August 16, 2019, two weeks before the warrant issued. J.A. 48–49. Officers saw several men approach a black pickup truck near the entrance to Kent Bottom, which the affidavit described as consistent with CDS transactions. J.A. 48. Later that afternoon, a white Lincoln and a black Nissan SUV arrived in Kent Bottom and parked along the tree line in front of the 6740 residence. J.A. 48. Multiple people went to the window of the white Lincoln before both vehicles left. J.A. 48.

After describing those events, the warrant application requested authority to search 6740 N. Solomons Island Road, including "all buildings, sheds, storage containers," and vehicles "found on the premises and connected to the residence and/or targets identified herein." J.A. 54. The warrant application also requested authority to search portions of the Kent Bottom dirt driveway and any persons, containers, or vehicles located there. J.A. 54.

A Maryland state judge issued a no-knock search warrant that same day. J.A. 31. The warrant authorized officers to search 6740 N. Solomons Island Road, including "any and all vehicles, building, sheds, and storage containers found on the premises." J.A. 32. The warrant also authorized officers to search portions of the Kent Bottom dirt driveway and any persons, containers, or vehicles located there. J.A. 32.

B. Warrant Execution

Officers executed the warrant at the 6740 residence on September 5, 2019. J.A. 155. A green Chevrolet Tahoe was parked on the side of the residence and was initially locked. J.A. 155. The defendant was the only person inside the residence when officers entered, and Yvette Griffin arrived during the search. J.A. 155. Officers opened the Tahoe with a lockout kit and found cocaine base, powder cocaine, marijuana, and a firearm inside the vehicle. J.A. 157. Officers also recovered the defendant's licenses and vehicle registration from the Tahoe. J.A. 157. The officers arrested the defendant after finding the Tahoe key. J.A. 157. No drugs were found inside the residence. J.A. 21.

C. Procedural History

A federal grand jury later charged the defendant with possession with intent to distribute cocaine base, cocaine, and marijuana; possession of a firearm in furtherance of a drug-trafficking crime; and possession of a firearm by a felon. J.A. 14–17.

The defendant moved to suppress the evidence seized during the September 5, 2019, search of the 6740 residence and the Tahoe. J.A. 20. He argued, among other things, that the search violated the Fourth Amendment because the warrant was not supported by probable cause of criminal activity. J.A. 20–30. The defendant specifically argued that the affidavit failed to establish a nexus, or connection, between the residence and the alleged drug activity in Kent Bottom. J.A. 189–90.

The district court held a suppression hearing and ultimately denied the defendant's motion. J.A. 183–356. The district court acknowledged that the affidavit "may not be the strongest warrant affidavit" it had ever read but still concluded that the issuing judge had substantial basis to find probable cause to search the 6740 residence. J.A. 243–44. The court reasoned that Kent Bottom was a small area of several homes connected by a dirt road, that the 6740 residence was close to the entrance, that Ty'Lik Griffin allegedly dealt drugs near the house, and that Desmond Griffin had been present during suspected transactions and had walked in and out of the 6740 residence. J.A. 243–44. The court stated that those facts "by themselves" would not have been sufficient, but that they were sufficient when considered with the affidavit's broader description of Kent Bottom as a "drive-up drug shop" or "open-air drug market." J.A. 244.

The case proceeded to trial, where the jury acquitted the defendant of possession with intent to distribute and possession of a firearm in furtherance of a drug-trafficking crime, but convicted him of being a felon in possession of a firearm. J.A. 928–29; J.A. 1014. The district court later sentenced the defendant to 180 months' imprisonment, followed by five years of supervised release. J.A. 1165–66.

The defendant now appeals, challenging the denial of his motion to suppress.[2] We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

II. Discussion

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. It represents the Framers' "response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley v. California*, 573 U.S. 373, 403 (2014). And it generally "seeks to secure 'the privacies of life' against 'arbitrary power' " and "to place obstacles in the way of a too permeating police surveillance." *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)).

The protections of the Fourth Amendment are at their apex when it comes to the home. *See Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."). "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980) (internal quotation marks omitted) (quoting *United States v. U.S.*

[2] The defendant also raises other issues related to his conviction and sentence, but because we reverse the district court's denial of his motion to suppress, vacate his conviction, and remand for proceedings consistent with this opinion, we need not address his remaining arguments.

Dist. Ct. for E. Dist. of Mich., S. Div., 407 U.S. 297, 313 (1972)). The Amendment thus "draw[s] a firm line at the entrance of the house." *Id*. at 590. "What lies behind that line is of course not inviolable." *Lange v. California*, 594 U.S. 295, 303 (2021). For example, "[a]n officer may always enter a home with a *proper* warrant." *Id.* (emphasis added).

A proper warrant must be issued by a neutral and detached magistrate judge and supported by probable cause. U.S. CONST. amend. IV. ("[N]o Warrants shall issue but upon probable cause . . . ."); *Kentucky v. King*, 563 U.S. 452, 459 (2011) (stating a warrant "may not be issued unless probable cause is properly established"). The probable cause requirement in particular "seek[s] to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." *Brinegar v. United States*, 338 U.S. 160, 176 (1949). "To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Id.*

Because a warrant must be supported by probable cause, a defendant may still seek to suppress evidence obtained during a warrant-authorized search by challenging the issuing judge's probable cause determination. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983); *Chatrie v. United States*, __ S.Ct. __, __, No. 25-112, 2026 WL 1855568, at *17 (U.S. June 29, 2026) ("When officers have obtained a warrant, as they did here, a search's legality will thus depend on whether a magistrate has properly found probable cause to support a particularly described search."). When reviewing such a challenge, the court does not assess probable cause de novo but instead determines whether the issuing judge had a "substantial basis" for finding probable cause. *United States v. Lyles*, 910 F.3d 787, 791 (4th Cir. 2018). Reviewing courts must afford the initial probable cause determination "great deference." *Gates*, 462 U.S. at 236 (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969)). But even if the warrant application did not establish probable cause for a search, courts will not suppress the evidence obtained from the search if the officers executing the warrant relied on the warrant in objectively reasonable "good faith." *United States v. Leon*, 468 U.S. 897, 922–23 (1984) (outlining the "good faith" exception to the exclusionary rule, the rule that generally bars the use of evidence obtained in violation of the Fourth Amendment).

Accordingly, the defendant's challenge requires we conduct two inquiries: (A) whether the warrant application gave the issuing judge a substantial basis to find probable cause to search the 6740 residence and, if it did not, (B) whether the officers relied in "good faith" on the issuing judge's probable cause determination such that the evidence should nevertheless be admitted.

A. Probable Cause

To determine whether a warrant application establishes probable cause, an issuing judge must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit[,] . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238. The affidavit must establish a connection between the evidence of a crime and the place to be searched. *See Zurcher v. Stanford Daily*, 436 U.S. 547, 556 & n.6 (1978). In other words, "[t]here must [] be some nexus between the suspected crime and the place to be searched." *United States v. Orozco*, 41 F.4th 403, 409 (4th Cir. 2022). In addition to a physical nexus, probable cause also requires a fair probability that evidence of the suspected crime will be found in the place to be searched *at the time* of the search. *See Lyles*, 910 F.3d at 794 (finding marijuana residue retrieved from a single trash pull did not provide probable cause for a residential search warrant partly because the residue gave no indication when the marijuana was consumed in the home); *see also* 2 Wayne R. LaFave, *Search & Seizure* § 3.7(d) (6th ed. 2025) ("The more complicated probable cause determination that must be made in search cases may be said to include four ingredients: time; crime; objects; and place."). These timing and nexus requirements are especially important when the place to be searched is a home. *See Lyles*, 910 F.3d at 793.

The affidavit here failed to establish a fair probability that contraband or evidence of a crime would have been found in the 6740 residence at the time of the search because the facts set forth in the affidavit were either (1) not connected to the 6740 residence, (2) too old, or (3) both.

1. Nexus

Nexus may be established by factual assertions directly linking the items sought to the place to be searched, such as factual assertions that criminal activity occurred at the place to be searched or that evidence of the crime was observed there. *See United States v. Grossman*, 400 F.3d 212, 217–18 (4th Cir. 2005). Nexus may also be established through reasonable, common-sense inferences from circumstantial evidence. *See id.* (finding probable cause despite the absence of direct evidence that drugs were inside the residences because a reliable informant identified the defendant as a drug dealer who used stash houses, officers observed suspicious conduct and use of keys to access the homes, and documents and witness statements connected him to the locations). But the existence of some relevant facts does not make every inference connecting evidence to the place to be searched reasonable. *See Lyles*, 910 F.3d at 794. Indeed, "[a]t some point an inference becomes, in Fourth Amendment terms, an improbable leap." *Id.* at 795.

Drug activity occurring at or near a residence is a relevant circumstance from which an issuing judge may infer that evidence will be found inside. *See United States v. Hodge*, 246 F.3d 301, 307 (3d Cir. 2001) (concluding that the proximity of criminal activity to the defendant's home supported the inference that defendant stored drug related evidence in his home). But proximity alone does not establish nexus. *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) ("[A] person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." (citing *Sibron v. New York*, 392 U.S. 40, 62–63 (1968))). Instead, the affidavit must provide additional facts connecting the criminal activity to the residence. *See id.* Such facts may include evidence that a drug dealer lives at the residence and keeps drugs there, *see United States v. Sumlin*, 956 F.3d 879, 886–87 (6th Cir. 2020); that a drug dealer departed directly from the residence to make a drug sale, *see United States v. Coleman*, 923 F.3d 450, 457–58 (6th Cir. 2019); that a drug dealer returned to the residence immediately after a sale, *see United States v. Ellison*, 632 F.3d 347, 349 (6th Cir. 2011); that a drug dealer retrieved drugs from the residence, *see Commonwealth v. Tapia*, 978 N.E.2d 534, 541–42 (Mass. 2012); or that a drug dealer carried drugs or proceeds into the residence, *see United States v. Burton*, 288 F.3d 91, 104 (3d Cir. 2002).

Here, the affidavit's broader Kent Bottom allegations failed to provide additional facts connecting the criminal activity to the 6740 residence. The affidavit stated that, "[f]or decades," DEU knew controlled substances had been sold in Kent Bottom, described the area as an "open-air drug market," and recounted suspected drug activity in the area. J.A. 36–49. The affidavit stated that people congregated and distributed CDS "in this area," but it did not say they stored drugs, proceeds, packaging, records, or firearms inside the 6740 residence. J.A. 37. And the specific criminal incidents from 2016, 2017, and 2018 concerned Kent Bottom, Kent Road, nearby properties, or other individuals not associated with the 6740 residence. J.A. 41–43. These broader allegations about Kent Bottom may have described drug activity in the area, but they did not supply a connection between that drug activity and the 6740 residence.

The more recent August observations also failed to connect recurrent Kent Bottom drug activity to the 6740 residence. On August 9, officers saw what appeared to be a hand-to-hand transaction involving a man believed to be Joseph Brown and a silver car stopped near 6750. J.A. 46. The affidavit associated Joseph Brown with 6754 N. Solomons Island Road, not the 6740 residence. J.A. 38; J.A. 46. Officers also saw vehicles park near the gravel driveway or along the tree line in front of the 6740 residence while people approached them. J.A. 46–47. On August 16, officers saw several men approach a black pickup near the entrance to Kent Bottom and later saw people go to the window of a white Lincoln parked along the tree line in front of the 6740 residence. J.A. 48. But the affidavit did not state that officers saw drugs, money, packaging, concealment, or identifiable objects change hands during those August encounters. J.A. 46–48. Nor did it state that officers stopped any alleged buyer, recovered CDS, or obtained an admission that any August transaction occurred. J.A. 46–48. Most importantly, it did not state that anyone departed the 6740 residence to conduct a transaction, returned there after one, retrieved drugs from the residence, or carried drugs or proceeds inside. Again, these facts in the affidavit may have modestly contributed to suspicion about outdoor activity in Kent Bottom, but they did not create a substantial basis to believe that evidence would be inside the 6740 residence. The further inference that drugs or trafficking evidence would be found inside that particular home was an "improbable leap."

The fact that Desmond was present in Kent Bottom during these August incidents does not change our conclusion. The affidavit stated that he was present in Kent Bottom during the suspected CDS transactions and was seen walking in and out of the 6740 residence before or after those transactions. J.A. 48. But the affidavit did not state that Desmond sold drugs, possessed drugs, carried proceeds, carried packaging, or exchanged anything with anyone. J.A. 48. It did not identify any suspected transaction involving Desmond that led to a CDS recovery or an admission from a buyer. J.A. 48. And it did not say that Desmond carried anything into or out of the 6740 residence. J.A. 48. Walking in and out of a family residence before or after suspected outdoor activity conducted by others did not establish that drug evidence would be found inside.

The lack of concrete connection to the 6740 residence is important because the Fourth Amendment does not permit suspicion by geography. *See Ybarra*, 444 U.S. at 91. Even in the reasonable suspicion context, where the government's burden is lower, presence in a high-crime area is a "weak and generic factor" that is given little weight within the totality of the circumstances. *United States v. Hawkins*, 161 F.4th 242, 247 (4th Cir. 2025). If a neighborhood's reputation cannot justify a brief street detention without particularized facts of criminal activity, it certainly cannot justify " 'the chief evil against which the wording of the Fourth Amendment is directed.' " *Payton*, 445 U.S. at 585 (quoting *U.S. Dist. Ct.*, 407 U.S. 297, 313 (1972)).

The lack of specific and particularized facts related to the 6740 residence especially undercuts probable cause here because the affidavit itself identified many other places where drugs or evidence of drug activity could have been located. While it does not require mathematical certainty, probable cause to search still requires some probability determination as to specified items being in a particular place. *See Maryland v. Pringle*, 540 U.S 366, 371 (2003). That means when there are facts making multiple places likely locations for the objects sought, there must be factual data creating a probability that the evidence is in the place actually searched. 2 Wayne R. LaFave, *Search and Seizure* § 3.2(e) (6th ed. 2025). "The government cannot, for example, search every unit in an apartment building because it has probable cause to believe that some unknown part of the building holds evidence of a crime." *United States v. Chatrie*, 136 F.4th 100, 153 (4th Cir. 2025) (Berner, J., concurring), *vacated and remanded by*, *Chatrie*, __ S.Ct. __ , __ , No. 25-112, 2026 WL 1855568. And it follows that the government cannot select a single unit for search unless the affidavit supplies facts making that unit a probable location for the evidence. *C.f. Maryland v. Garrison*, 480 U.S. 79, 88 n.13 (1987).

Here, Kent Bottom included several residences and nearby properties, including the 6738, 6740, 6750, and 6754 residences on N. Solomons Island Road, and 6790 Kent Road. J.A. 36–37. The affidavit associated people suspected of criminal activity with other residences: Thomas and Tony Brown with 6750 and Joseph Brown with 6754. J.A. 38.

The more recent observations also involved vehicles parked along the dirt road, near the tree line, or near other residences. J.A. 43–48. So, even accepting the affidavit's premise that Kent Bottom functioned as an open-air drug market, the affidavit did not show why evidence of drug trafficking would probably be found in the 6740 residence over the many other locations in Kent Bottom that seemed equally as likely to contain the evidence sought.

2. Timing

"Time is a crucial element of probable cause," and a valid warrant may issue only on "facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *United States v. McCall*, 740 F.2d 1331, 1335–36 (4th Cir. 1984) (quoting *Sgro v. United States,* 287 U.S. 206, 210 (1932)). The staleness inquiry is not governed by "pat formulas or simple rules," but by the circumstances, including "the nature of the unlawful activity alleged, the length of the activity, and the nature of the property to be seized." *Id.* at 1336. Older facts may support probable cause if the nature of the alleged criminal activity is recurrent or ongoing and the evidence sought is intrinsically likely to remain where it was observed. *See id.* at 1337; *Lyles*, 910 F.3d at 794 (finding marijuana residue retrieved from a single trash pull did not provide probable cause for a residential search warrant because the single trash pull was less likely to show "recurrent or ongoing activity" and because the residue gave no indication that additional marijuana would be found in the home). But older facts do not support probable cause when they show isolated criminal conduct and give no reason to believe evidence remains at the place to be searched. *See United States v. Raymonda*, 780 F.3d 105, 114 (2d Cir. 2015) (finding a single old incident of criminal activity did not create a fair probability that evidence would remain months later absent circumstances showing continuing interest or retention); *McCall*, 740 F.2d at 1337; *Lyles*, 910 F.3d at 794.

The affidavit's only concrete allegation of drug activity inside the 6740 residence was stale. The affidavit stated that, in 2006, officers searched the residence and found the defendant inside attempting to flush a plastic bag of marijuana down the toilet. J.A. 40–41. Officers also recovered money, marijuana, and paraphernalia that the affidavit described as indicative of distribution. J.A. 40–41. But that incident occurred thirteen years before the warrant issued on August 30, 2019. J.A. 31; J.A. 40–41. And the affidavit did not describe any repeated searches, controlled buys, informant reports, trash pulls, or surveillance showing that the 6740 residence continued to be used for "recurrent or ongoing" drug activity. Nor did it identify any feature of the evidence sought—CDS, proceeds, packaging, records, firearms, or related items—that made it intrinsically likely to remain inside the 6740 residence for thirteen years. The 2006 incident therefore showed isolated historical conduct and could not establish a fair probability that evidence of drug trafficking would be found inside the 6740 residence in 2019.[3]

3. Both Nexus and Timing

The facts regarding the defendant's son Ty'Lik were deficient in both respects. The affidavit described an alleged April 24, 2019, hand-to-hand transaction between Ty'Lik and Richard Berry in front of the 6740 residence. J.A. 44. Officers stopped Berry and

[3] While the general Kent Bottom allegations discussed in Section II.A.1 refer to incidents more than a year before the warrant application, we find they are not stale because these allegations describe recurrent and ongoing drug activity in Kent Bottom.

recovered approximately 0.5 grams of crack cocaine. *Id.* Berry said he had purchased the drugs from "lil smoke," whom DEU knew as Ty'Lik. *Id.* That event occurred four months before the warrant, and it was one isolated transaction, not ongoing recurrent activity. J.A. 44. And the affidavit did not explain why evidence from a street level drug sale in April would remain inside the 6740 residence in late August. Moreover, the alleged transaction took place outside, and the affidavit did not indicate that Ty'Lik entered the 6740 residence before or after the transaction. It did not say any evidence or contraband moved between Ty'Lik and the 6740 residence. J.A. 44. And although it was his grandparents' home, the affidavit identified Ty'Lik's address as 4320 Pleasant Court in Huntingtown, not the 6740 residence. J.A. 44. Thus, even if Ty'Lik's outdoor transaction established drug activity near the 6740 residence, it did not establish a fair probability that evidence of that activity would be found inside the home at the time of the search.

* * *

The affidavit failed to establish a fair probability that contraband or evidence of a crime would be found inside the 6740 residence at the time of the search because the facts set forth in the affidavit were either too old, not connected to the 6740 residence, or both. The only concrete allegation of drug activity inside the 6740 residence was 13 years old. The allegations suggesting recurrent drug activity concerned Kent Bottom generally, nearby properties, or individuals not associated with the 6740 residence. And the remaining facts involving the 6740 residence showed only proximity and association: Ty'Lik Griffin's single outdoor transaction near his grandparents' home and Desmond Griffin's unexplained movement in and out of the residence. Viewed together, those facts did not establish probable cause to search the home. *C.f. United States v. Valenzuela*, 365 F.3d 892, 897 (10th Cir. 2004) (pointing out that while a court must look at the totality of the circumstances rather than engage in a "divide-and-conquer" analysis, it may not "arrive at probable cause simply by piling hunch upon hunch" (internal quotation marks removed)).[4]

Our conclusion serves the Fourth Amendment's special protection for the home and the function of the probable cause requirement. The home is "first among equals," *Jardines*, 569 U.S. at 6, and the probable-cause requirement safeguards citizens from "rash and unreasonable interferences with privacy" and from searches based on "whim or caprice." *Brinegar*, 338 U.S. at 176. Great deference to an issuing judge does not permit a court to treat a neighborhood's reputation as a substitute for facts tying evidence to a particular residence. And totality review does not allow stale allegations, area-wide suspicion, and ordinary movement around a family home to be combined into the missing nexus. The affidavit may have supported suspicion that drug activity occurred somewhere

[4] The totality of these facts are weak even by reasonable suspicion standards, which is less demanding than probable cause, *see Alabama v. White*, 496 U.S. 325, 330 (1990). In *United States v. Drakeford*, the court held that officers lacked reasonable suspicion even though they had (1) a confidential-informant tip that Drakeford was trafficking cocaine and heroin; (2) months of surveillance; (3) two encounters officers believed were consistent with drug transactions; (4) syringes recovered from a vehicle after one suspected encounter; and (5) an officer's belief that he saw a hand-to-hand transaction. 992 F.3d 255, 263–65 (4th Cir. 2021). The court reasoned that the officers did not see drugs or money change hands and that an officer's conclusory label that ordinary conduct is a drug transaction cannot substitute for specific, articulable facts. *Id.* at 264–65; *id.* at 267 (Wynn, J., concurring) ("[T]he success or failure of a suppression motion cannot hinge on an officer saying, in essence, 'I know it when I see it.' "). The facts here were no stronger as a basis to suspect criminal activity, let alone as a basis to suspect criminal evidence was inside the 6740 residence.

in Kent Bottom, but it did not provide a substantial basis to cross the firm constitutional line at the entrance of the 6740 residence.

B. Good Faith Exception

Under the good faith exception, evidence obtained from an invalid search warrant will not be suppressed if the officer's reliance on the warrant was "objectively reasonable." *United States v. Perez,* 393 F.3d 457, 461 (4th Cir. 2004) (internal quotation marks omitted) (citing *Leon*, 468 U.S. at 922). *Leon* identifies four circumstances in which an officer's reliance on a warrant would not qualify as " 'objectively reasonable': (1) when the issuing judge 'was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth'; (2) when 'the issuing judge has wholly abandoned' " his detached and neutral judicial role; (3) when the supporting " 'affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'; and " '(4) when the warrant was so facially deficient in failing to particularize the place to be searched or the things to be seized that the executing officers cannot reasonably presume it to be valid.' " *Id.* (cleaned up) (citing *Leon*, 468 U.S. at 923).

The third limitation is relevant here. For the third limitation to the good faith exception, the court asks whether a reasonably well-trained officer would have known that the affidavit failed to establish probable cause despite the issuing judge's authorization. *Leon*, 468 U.S. at 922 n.23. Although the good-faith inquiry is less demanding than the probable cause inquiry, it still requires some indicia of probable cause. *United States v. Bynum*, 293 F.3d 192, 195 (4th Cir. 2002) (explaining that the "so lacking in indicia" test is less demanding than the "substantial basis" test). An affidavit with stale facts and a missing residential nexus may be so lacking in indicia of probable cause that reliance on it would be objectively unreasonable. *See, e.g.*, *Lyles*, 910 F.3d at 796–97; *United States v. Doyle*, 650 F.3d 460, 472–73 (4th Cir. 2011); *United States v. Cordova*, 792 F.3d 1220, 1221–22 (10th Cir. 2015).

United States v. Lyles, 910 F.3d 787 (4th Cir. 2018), illustrates the residential nexus defect. There, the court held that the affidavit did not establish probable cause and that the good-faith exception did not apply. *Lyles*, 910 F.3d at 794, 797. Officers obtained a warrant to search a home after a trash pull revealed three marijuana stems, three empty packs of rolling papers, and a document addressed to the residence. *Id.* at 790. The court reasoned that a "flimsy trash pull" producing "scant evidence" could not reasonably justify "the indiscriminate rummaging through a household." *Id.* at 797. Despite the fresh physical evidence linking the residence to drugs, the court still concluded that the affidavit did not suggest that marijuana would be found in the house at the time of the search. *See id.*

Here, the affidavit had no comparable evidence linking drugs to the 6740 residence. There was no trash pull from the residence, no recent drug evidence recovered from the residence, and no observation of drugs or proceeds entering the house. As discussed above, the Ty'Lik and Desmond allegations did not supply the missing nexus. Ty'Lik's alleged transaction occurred outside the 6740 residence, and the affidavit did not state that he lived there, entered the home, retrieved drugs from it, returned proceeds to it, or otherwise used it in connection with the sale. J.A. 44. Desmond's alleged conduct was even thinner. The affidavit said he was present during suspected outdoor transactions and walked in and out of his family home, but it did not say he sold drugs, possessed drugs, exchanged anything, carried anything, or moved contraband into or out of the residence. J.A. 48. If the fresher, more place-specific evidence in *Lyles* could not support good-faith reliance, the more attenuated showing here could not either.

United States v. Doyle, 650 F.3d 460 (4th Cir. 2011), illustrates the timing defect. There, the court held that the good-faith exception did not apply to a residential child-pornography warrant because the affidavit gave "zero indication" when the crime was committed. *Doyle*, 650 F.3d at 463. The affidavit relied on a child's statement that Doyle had shown him photographs, but it did not say when Doyle showed the photographs. *Id.* at 465–66. The court explained that "even if the affidavit established probable cause, it was completely devoid of indicia that the probable cause was not stale." *Id.* at 475. The court reasoned that "nothing indicated when or if child pornography allegedly existed in Doyle's home" and ultimately concluded that an "objectively reasonable officer would not rely on a warrant application so devoid of necessary information." *Id.*

Here, the affidavit's timing defect was apparent as the affidavit's dates showed why reliance was unreasonable. Again, the only concrete allegation of drug activity inside the 6740 residence occurred in 2006, 13 years before the warrant issued. J.A. 40–41. The April 24 Ty'Lik incident occurred four months before the warrant, outside the home, and involved a street-level drug sale. J.A. 44. The affidavit did not say Ty'Lik entered the 6740 residence before or after the transaction, moved drugs or proceeds into the 6740 residence, or engaged in recurrent drug activity there. J.A. 44. Like how an officer could not reasonably rely on the date-free affidavit in *Doyle*, an officer could not reasonably rely on an affidavit whose dates showed that the facts regarding the 6740 residence were more than 13 years old or involving a four-month-old street-level drug deal.

United States v. Cordova, 792 F.3d 1220 (10th Cir. 2015), illustrates both defects. There, the Tenth Circuit held that the good-faith exception did not apply because the affidavit contained so few facts implicating Cordova or his current home that no reasonable officer could rely on the warrant in good faith. *Cordova*, 792 F.3d at 1221. The affidavit relied on a 21-month-old attempted delivery of 70 pounds of marijuana to a vehicle registered to someone else and parked in front of Cordova's former residence. *Id.* at 1224–25. It also described one later incident, four months before the warrant, in which that other person drove into the garage of Cordova's current home. *Id.* at 1225. The court held that these facts did not support good-faith reliance because the old transaction did not implicate Cordova or his current home, and the later garage observation was an isolated event that did not show the home was being used for ongoing drug trafficking. *Id.* at 1225–26. The court emphasized that the good-faith exception is "broad" but "not boundless," and that the affidavit's sparse connection to the current home amounted to "nothing more than a hunch." *Id.* at 1226.

Here, the affidavit was weaker than the affidavit in *Cordova*. The old information in *Cordova* involved a planned 70-pound marijuana delivery—evidence of large-scale drug trafficking. *Id.* at 1224–25. The old information here involved a thirteen-year-old marijuana incident inside the 6740 residence and, at most, a four-month-old street level drug sale outside it. J.A. 40–41; J.A. 44. Further, the recent residential connection here was thinner too. In *Cordova*, officers at least saw a suspected drug associate drive into the garage of the target home. 792 F.3d at 1225. Here, the affidavit alleged only that Desmond walked in and out of a family residence before or after suspected outdoor transactions, without stating that he sold drugs, possessed drugs, exchanged anything, carried anything, or moved contraband into or out of the 6740 residence. J.A. 48. If the facts in *Cordova* were too removed from the target home to support good-faith reliance, the facts here were too.

Accordingly, the good-faith exception does not apply.[5] The affidavit had no fresh physical evidence tying drugs to the 6740 residence. It had dates showing that the specific

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[5] We respect our good colleague's different conclusion on what a reasonable officer could conclude from this affidavit. We write briefly only to clarify the weight a court should assign to the decisions of the issuing judge and the district court when determining whether the third limitation on the good faith exception applies.

The dissent places some weight on the fact that "two judges—the state trial court judge who issued the warrant and the federal district court judge who presided over this case—concluded that the same materials were sufficient to establish probable cause." Diss. Op. at 29. We do not dispute that judicial probable cause determinations may bear on whether an affidavit's deficiency was reasonably apparent. Indeed, *Leon* considered differing probable cause determinations of "thoughtful and competent judges" in concluding that the officers there acted reasonably. *See Leon*, 468 U.S. at 926. But prior judicial determinations cannot by themselves supply indicia of probable cause missing from the affidavit.

For one, giving dispositive weight to the issuing judge's probable cause determination would risk making the good faith inquiry circular. *Leon* asks whether an officer's reliance on an issued warrant was objectively reasonable notwithstanding the issuing judge's erroneous probable cause determination. *See id.* at 922–23. This means that every case in which *Leon*'s third limitation is at issue necessarily involves a judicially issued warrant. If the issuance is given too much weight in the good faith analysis, the third limitation to the good faith exception may never apply, because the issuing judge's decision would establish objective reasonableness even when the affidavit itself was (Continued) allegations related to the 6740 residence were stale or isolated. And it had an even weaker connection to the searched residence than the affidavit rejected in *Cordova*. There was not

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lacking indicia of probable cause such that no reasonably well-trained officer could rely on it. Therefore, an issuing judge's approval may support an officer's reliance when the affidavit presents a close or reasonably debatable question, but it cannot render reasonable an officer's reliance on an affidavit that is so lacking in indicia of probable cause, such as the affidavit here.

Additionally, a district court's decision approving the issuing judge's probable cause determination should not be given any deferential weight. The applicability of the good faith exception "is purely a legal conclusion" that we review de novo. *United States v. DeQuasie*, 373 F.3d 509, 520 (4th Cir. 2004) (citing *United States v. Smith*, 30 F.3d 568, 571 (4th Cir. 1994)). We must therefore independently determine, based on our review of the affidavit, whether the good faith exception applies. *See Ornelas v. United States*, 517 U.S. 690, 705 (1996) (Scalia, J., dissenting) ("[I]n de novo review, the 'weight due' to a trial court's finding is zero."). Our probable cause standard here also shows that the district court's decision should not be afforded any deference. As discussed above, when reviewing the underlying probable cause determination, we do not consider or defer to the district court's assessment. We instead ask whether the issuing judge had a "substantial basis" for finding probable cause. *Lyles*, 910 F.3d at 791. Treating the district court's agreement with the issuing judge with any deference would be inconsistent with our standards of review.

For similar reasons, we are unpersuaded by the dissent's effort to distinguish *Lyles* on the ground that the district court there granted the defendant's suppression motion. Diss. Op. at 29. The court in *Lyles* independently concluded that the affidavit was so deficient that no reasonably well-trained officer could rely on it. *See Lyles*, 910 at 796–97. The district court's decision did not affect the indicia of probable cause contained in the affidavit. *See id.* *Cordova* further illustrates the point. There, the district court denied the defendant's motion to suppress under the good faith exception, yet the Tenth Circuit reversed because the affidavit's deficiencies rendered reliance on the warrant objectively unreasonable. *Cordova*, 792 F.3d at 1226. Thus, whether a district court granted or denied a motion to suppress cannot displace our duty to conduct a de novo review and independently examine the affidavit itself.

Accordingly, to the extent the dissent treats the issuing judge's approval as independently sufficient to establish objective good faith, accords deferential weight to the district court's decision approving the issuing judge's determination, or regards the district court's decision in *Lyles* as materially distinguishing that case, we respectfully disagree.

a single fact contained in the affidavit that would allow a reasonable trained officer to believe drugs would be located in the 6740 residence at the time of the search. Indeed, as discussed in footnote 4, the facts here may not even have established reasonable suspicion of criminal activity, much less probable cause to arrest anyone or to search a home. Because the affidavit's facts related to the 6740 residence were stale, its recent facts were merely described Kent Bottom generally, and its remaining facts showed only proximity and association, a reasonably well-trained officer would have known that the warrant failed to establish probable cause to search the 6740 residence.[6]

III. Conclusion

For the reasons set forth above, we reverse the district court's denial of Earl Leroy Griffin, Jr.'s motion to suppress, vacate his conviction, and remand for further proceedings consistent with this opinion.

REVERSED, VACATED, AND REMANDED

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[6] The warrant separately authorized officers to search persons, containers, and vehicles located on portions of the Kent Bottom dirt driveway. J.A. 32. We need not decide whether that broader provision was supported by probable cause. The Tahoe was parked "on the side of" the 6740 residence and was searched as a vehicle found on the residential premises. J.A. 155. A warrant authorizing the search of an entire premises extends to vehicles on the property that are owned by or under the dominion and control of the premises owner, or that reasonably appear to be so controlled. *United States v. Patterson*, 278 F.3d 315, 318 (4th Cir. 2002). And a vehicle located within a home's curtilage does not lose the Fourth Amendment protection afforded that area merely because it is an automobile. *See Collins v. Virginia*, 584 U.S. 596 (2018). Accordingly, the search of the Tahoe is connected to the warrant's authorization to search the 6740 premises, not its separate authorization to search vehicles on the Kent Bottom driveway.

TOBY HEYTENS, Circuit Judge, dissenting:

I would affirm Griffin's conviction and sentence. Even assuming for the sake of argument that the warrant here was constitutionally defective, the resulting evidence should not be suppressed because the officers had an objectively reasonable basis to rely on a facially valid search warrant.

Griffin admits the officers here "obtained a warrant and abided by its terms." *United States v. Leon*, 468 U.S. 897, 922 (1984); see Oral Arg. 1:37–:50. For that reason, suppression is inappropriate so long as the officers were "objectively reasonable" in relying on that warrant. *Leon*, 468 U.S. at 922. The Supreme Court has emphasized that searches conducted after the issuance of—and consistent with—a warrant "will rarely require any deep inquiry into reasonableness" and that suppression is appropriate only when the relevant officers had "*no* reasonable grounds for believing that the warrant was properly issued." *Id.* at 922–23 (quotation marks removed; emphasis added).

In my view, that high standard is not met. Griffin makes no argument that the magistrate who issued this warrant "wholly abandoned [their] judicial role." *Leon*, 468 U.S. at 923. Griffin also takes—at best—a "passing shot at" suggesting the warrant was "so facially deficient" that no officer could "reasonably presume it to be valid" in his opening brief before abandoning any such suggestion in his reply brief. *Grayson O Co v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) (quotation marks removed) (first quote); *Leon*, 468 U.S. at 923 (second and third quotes). Instead, Griffin argues the materials that officers submitted in support of the warrant application were "so lacking in indicia of probable cause as to render" it "entirely unreasonable" for them to believe the search was constitutional despite the existence of a facially valid warrant. *Leon*, 468 U.S. at 923 (quotation marks removed).

I disagree. For one thing, two judges—the state trial court judge who issued the warrant *and* the federal district court judge who presided over this case—concluded that the same materials were sufficient to establish probable cause. To be sure, that fact alone does not defeat Griffin's argument. But having reviewed both the warrant application and the district court's explanation for reaching that conclusion, I cannot say the officers were "entirely unreasonable" in relying on the warrant here. *Leon*, 468 U.S. at 923 (quotation marks removed).

Griffin cites *United States v. Lyles*, 910 F.3d 787 (4th Cir. 2018), but that case does not help him. In *Lyles*, the district court had *granted* the defendant's suppression motion after concluding the warrant application had been "obviously deficient" because it "contain[ed] only vague allegations of 'unlawful activity,' virtually no facts, and conclusory claims of the right to search for firearms and other evidence without any explanation." *United States v. Lyles*, No. TDC-17-0039, 2017 WL 5633093, at *7 (D. Md., Nov. 20, 2017). Griffin does not—and could not plausibly—argue that this case involves that sort of "'bare bones' affidavit." *Leon*, 468 U.S. at 926. Instead, Griffin makes a far more granular claim, insisting the warrant affidavit's extensive discussion of open-air drug activity in a small area over the course of years was not "*sufficiently* linked" to him or his residence to support probable cause. Griffin Br. 18 (emphasis added). This case thus strikes me as falling well outside the "rare[]" "circumstances" in which officers' reliance on a facially valid warrant was nonetheless unreasonable. *Leon*, 468 U.S. at 926. And because

I am not persuaded by any of Griffin's other challenges to his conviction and sentence, I would affirm.